



Federal Election Commission



Special Notices on Political Ads and Solicitations



FEC Building in downtown Washington, D.C.

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Introduction

This brochure has been developed to help clarify the rules relating to the following types of special notices:

- Disclaimer notices;
- Best efforts notifications; and
- IRS disclosure notices.

Each notice may be required (as appropriate) when persons finance communications related to federal elections or solicit funds for federal political committees.¹ A section-by-section explanation of these rules is provided within.

Please be advised that this brochure is not intended to provide an exhaustive discussion regarding this area of the election law. The citations refer to the Federal Election Campaign Act (FECA), as amended by the Bipartisan Campaign Reform Act of 2002 (BCRA), Federal Election Commission Regulations (11 CFR) and Advisory Opinions (AOs). If you have any questions after reading the brochure, please contact the FEC:

Federal Election Commission
999 E Street, NW
Washington, DC 20463

(202) 694-1100 (local)

(800) 424-9530 (toll free)

(202) 219-3336 (for the hearing impaired)

¹ This brochure serves as the small entity compliance guide to Commission regulations regarding Communications and Solicitations, as required by section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

Disclaimer Notices

What is a Disclaimer Notice?

For the purpose of this brochure, a “disclaimer” notice is defined as a statement placed on a public communication that identifies the person(s) who paid for the communication and, where applicable, the person(s) who authorized the communication.

When is a Disclaimer Required?

Basic Rule

Political Committees

Political committees must include a disclaimer on all “public communications” (defined below), regardless of whether the communication expressly advocates the election or defeat of a clearly identified candidate, or solicits funds in connection with a federal election (i.e., contributions for a federal candidate or a federal political committee).²

Individuals and Other Persons

A disclaimer must appear on any “electioneering communication” (defined below) and on any public communication by any person that expressly advocates the election or defeat of a clearly identified candidate or solicits funds in connection with a federal election.



Application

Specific examples of public communications that would require a disclaimer include:

- Public communications coordinated with a federal candidate (i.e., in-kind contributions or coordinated party expenditures);
- Independent expenditures;
- Electioneering communications;
- Solicitations for a federal candidate or a federal political committee; and
- Political committees’ websites.

Definitions

Public Communications

As defined in FEC regulations, the term “public communication” includes:

- Broadcast, Cable or Satellite transmission;
- Newspaper;
- Magazine;
- Outdoor advertising facility (e.g., billboard);
- Mass mailing (defined as more than 500 pieces of mail matter of an identical or substantially similar nature within 30-day period);
- Telephone banks (defined as more than 500 telephone calls of an identical or substantially similar nature within any 30-day period);
- Internet websites of political committees;

² The FEC recommends placing disclaimer notices on all campaign materials.

- Bulk email (defined as unsolicited electronic mail of more than 500 substantially similar communications); and
- Any other general public political advertising (11 CFR 110.11(a)).

Electioneering Communications

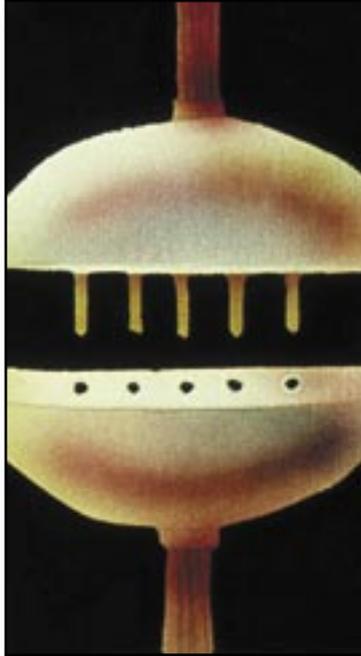
As defined in FEC regulations, the term “electioneering communications” is a broadcast, cable or satellite communication that fulfills each of the following conditions:

- Refers to a clearly identified candidate;
- Is publicly distributed;
- Is distributed within 30 days before a primary election or within 60 days before a general election; and
- In the case of congressional candidates only, is “targeted to the relevant electorate” (can be received by 50,000 or more persons in the district or state the candidate seeks to represent) (11 CFR 100.29).

Independent Expenditures

An independent expenditure is an expenditure for a communication that expressly advocates the election or defeat of a clearly identified candidate and is not made in cooperation,

consultation, or concert with, or at the request or suggestion of, any candidate, authorized committee or their agents, or a political party committee or its agents.
11 CFR 100.16; 109.11.



Coordinated Party Expenditures

Coordinated party expenditures are expenditures made by national or state party committees on behalf of their nominees in connection with the general election. Such expenditures may be coordinated with the candidate, but are reported only by the party committee that makes the expenditure. These expenditures are subject to a special monetary limit.

11 CFR 110.11(d)(1); 109.32.

Exempt Party Activities

State and local party committees may engage in certain candidate-support activities without making a contribution or expenditure provided specific rules are followed. These “exempt” party activities refer to the three types of communications listed below:

- Registration and get-out-the-vote drives on behalf of the Presidential ticket;
- Distribution of campaign materials by volunteers on behalf of federal candidates; and

- Slate cards listing at least 3 candidates for public office (11 CFR 100.80, 100.87 and 100.89; 100.140, 100.147 and 100.149; and 11 CFR 110.11(e)).

What must the Disclaimer Say?

The actual wording of the disclaimer depends on the type of communication, as explained below. In each example, it is presumed that the ad qualifies as a “public communication” in connection with a federal election.

Messages Authorized and Financed by a Candidate

On a public communication that is authorized and paid for by a candidate or his/her campaign committee, the disclaimer notice must identify who paid for the message. 11 CFR 110.11(b)(1).

Example: “Paid for by the Sheridan for Congress Committee.”

Messages Authorized but Not Financed by a Candidate

On a public communication that is authorized by a candidate or his/her campaign committee, but is paid for by another person, the disclaimer notice must identify who paid for the communication and indicate that the candidate authorized the message. 11 CFR 110.11(b)(2).

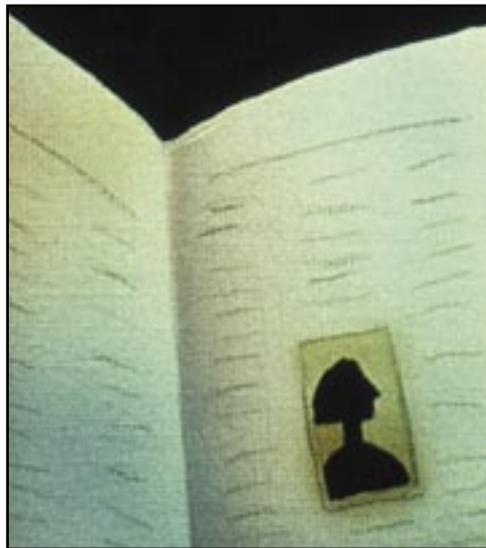
Example: “Paid for by the XYZ State Party Committee and authorized by the Sheridan for Congress Committee.”³

Messages Not Authorized by a Candidate

On a public communication that is not authorized by a candidate or his/her campaign committee, the disclaimer notice must identify who paid for the message, state that it was not authorized by any candidate or candidate’s committee and list the permanent street address, telephone number or World Wide Web address of the person who paid for the communication.

11 CFR 110.11(b)(3).

Example: “Paid for by the QRS Committee (www.QRScommittee.org) and not authorized by any candidate or candidate’s committee.”



³ Please note that for communications listing several candidates, the disclaimer notice may state that the message was authorized by the candidates identified in the message or, if only certain candidates have authorized it, by those candidates identified with an asterisk (AO 1994-13)

Coordinated Party Expenditures

Pre-nomination Period

On a public communication that is made as a coordinated party expenditure before a nominee is chosen, the disclaimer notice must identify the committee that paid for the message, but need not state whether the communication was authorized. 11 CFR 110.11(d)(1).

Example: “Paid for by XYZ State Party Committee.”

Post-nomination Period

Once a candidate has been nominated for the general election, the disclaimer notice must also state who authorized the communication.

Example: “Paid for by the XYZ State Party Committee and authorized by the Sheridan for Congress Committee.”

The committee that actually makes the expenditure is considered to be the person who paid for the public communication even when the committee is acting as the designated agent of a different party committee.

Exempt Party Activities

On exempt activity communications (for example, campaign materials) the disclaimer notice must identify the committee that paid for the message. 11 CFR 110.11(e).

Example: “Paid for by the XYZ State Party Committee.”

How and Where must the Disclaimer Appear?

In order to give the reader sufficient notice about the person(s) paying for or authorizing a public communication regardless of its medium, the disclaimer notice must be “clear and

conspicuous” on the committee’s communications, solicitations and response materials. The notice will not be considered to be “clear and conspicuous” if:

- It is difficult to read or hear; or
- The notification is placed where it can be easily overlooked (11 CFR 110.11(c)(1)).

Additional requirements are described below.

Printed Materials

On printed materials, the disclaimer notice must appear within a printed box set apart from the other contents in the communication. The print must be of a sufficient type-size to be clearly readable by the recipient of the communication, and the print must have a reasonable degree of color contrast between the background and the printed statement. 11 CFR 110.11(c)(2)(i), (ii) and (iii).

Example:

Paid for by the
Save the Seahorses
Committee
and authorized by the
McKay for Senate
Committee.

As long as the disclaimer appears somewhere within the communication it does not have to appear on the front page or cover of multiple-paged documents. However, in the case of single-sided documents and billboards, the disclaimer must appear on the front. 11 CFR 110.11(c)(2)(iv).

Safe Harbor for “Clearly Readable”

The regulations contain a safe harbor that establishes a fixed, 12-point type size as a sufficient type size for disclaimer text in newspapers, magazines, flyers, signs and other printed communications that are no larger than the common poster size of 24 inches by 36 inches. 11 CFR 110.11(c)(2)(i). Please note, disclaimers for larger communications will be judged on a case by case basis.

Safe Harbor for “Reasonable Degree of Color Contrast”

The regulations additionally provide two safe harbor examples that would comply with color contrast requirement:

- The disclaimer is printed in black on a white background; or
- The degree of contrast between the background color and the disclaimer text color is at least as great as the degree of contrast between the background color



and the color of the largest text in the communication (11 CFR 110.11(c)(2)(iii)).⁴

Packaged Materials

When communications are distributed in a package or as a group, a committee must evaluate each item separately in order to determine whether a disclaimer notice is required on that item. A message or ad that would require a disclaimer notice if it were distributed separately must still display the notice when it is included in a package of materials. 11 CFR 110.11(c)(2)(v).

Example: A campaign poster is mailed with a campaign brochure and solicitation letter. A disclaimer notice must appear on each of these items.

Radio and Television Communications Authorized by the Candidate

Radio

A radio broadcast must include an audio statement that is spoken by the candidate. The statement must identify the candidate, and state that he or she has approved the communication. 11 CFR 110.11(c)(3)(i).

Television

Like radio broadcasts, televised communications must include an oral disclaimer spoken by the candidate in which the candidate identifies himself or herself and states that he or she has approved the communication. 11 CFR 110.11(c)(3)(ii).⁵

⁴ These examples do not constitute the only ways to satisfy the color contrast requirement.

⁵ For additional information on broadcast advertising (e.g., radio, TV), please contact the Federal Communications Commission at (202) 418-1440 or (202) 418-7096 (for cable broadcasts).

This disclaimer can be conveyed in one of two ways:

- A full-screen view of the candidate making the statement (11 CFR 110.11(c)(3)(ii)(A)); or
- A “clearly identifiable photographic or similar image of the candidate” that appears during the candidate’s voice-over statement (11 CFR 110.11(c)(3)(ii)(B)).

The communication must also include a “clearly readable” written statement that appears at the end of the communication “for a period of at least four seconds” with a “reasonable degree of color contrast” between the background and the disclaimer statement. 11 CFR 110.11(c)(3)(iii).

Radio and Television Messages Not Authorized by the Candidate

Radio

The disclaimer notice must include the name of the political committee or person responsible for the communication and any connected organization.

Example, “ABC is responsible for the content of this advertising.” 11 CFR 110.11(c)(4).

Television

The disclaimer described above must be conveyed by a “full-screen view of a representative of the political committee or other person making the statement,” or a “voice-over” by the representative. 11 CFR 110.11(c)(4)(ii) and 2 U.S.C. 441d(d)(2).

The disclaimer statement must also appear in writing at the end of the communication in a “clearly readable manner” with a “reasonable degree of color” contrast between the background and the printed statement “for a period of at least four seconds.” 11 CFR 110.11(c)(4).



When is a Disclaimer Not Required?

Although the FEC recommends that disclaimer notices be included on all campaign materials, the notices are not required in the following situations.

Disclaimer Placement is Inconvenient

In situations where a disclaimer notice cannot be conveniently printed, the notice is not required. This provision affects items such as pens, bumper stickers, campaign pins, campaign buttons and similar small items. Further, a disclaimer notice is not required for communications using skywriting, clothing, water towers or other forms of advertisement where it would be impracticable to display the disclaimer notice. 11 CFR 110.11(f) (See also AO 2002-9.)

Internal Corporate/ Labor Communications

A disclaimer notice is not required for solicitations or communications made by a separate segregated fund or connected organization to its “restricted class.”⁶

Materials Used for Administrative Purposes Only

A disclaimer notice is not required on checks, receipts or similar items of minimal value that do not include a political message and are used only for administrative purposes. 11 CFR 110.11(f)(1)(iii).

“Best Efforts” Notification

Under the Act and FEC regulations, political committees must report the name, address, occupation and employer of any individual who contributes more than \$200 in a calendar year (or in an election cycle in the case of an authorized committee) (pursuant to 11 CFR 104.3(a)(4)).

Committees must make their “best efforts” to obtain and report this information.

To satisfy the “best efforts” requirement, a political committee must include a statement on its solicitations explaining that it is required to make its best efforts to obtain and report contributor information. This statement is referred to as the “best efforts” notification; two examples are listed below:

- Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 in a calendar year (or in an election cycle in the case of an authorized committee), or
- To comply with Federal law, we must use our best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 per calendar year (or in an election cycle in the case of an authorized committee).

If the committee does not receive the required contributor information, it must make a follow-up request within 30 days. Any contributor information provided or otherwise available to the committee must be disclosed on FEC reports. In some cases, it may be necessary for the committee to amend previous reports. 11 CFR 104.7.

⁶ The restricted class includes the executive and administrative personnel of the organization, its stockholders, its members (noncorporate) and their families. See 11 CFR 114.5(g)(1) and (2); 114.7(a) and (c).

IRS Disclosure Requirements

Under the Internal Revenue Service Code (26 U.S.C. §6113), certain tax-exempt organizations that are not eligible to receive tax deductible charitable contributions, and whose gross annual receipts normally exceed \$100,000, must disclose in an “express statement (in a conspicuous and easily recognizable format)” that contributions to the organization are not deductible for Federal income tax purposes as charitable contributions. For more information, contact the IRS at (877) 829-5500.



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